

4-12-05

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COVER SHEET REPLY

04/11/2005: REPLY TO NON-FINAL OFFICE ACTION REGARDING
APPLICATION/CONTROL NUMBER: 10/816,420 : DATE MAILED:
03/11/2005
EXAMINER: ROANE, AARON F.

DOCUMENTS SUBMITTED

ED435669635US

1. PART 1: REBUTTAL REPLY IN REFERENCE TO DETAILED ACTION -
REJECTION OF CLAIM 1 (11 PAGES)
2. PART 2: REBUTTAL REPLY IN REFERENCE TO DETAILED ACTION -
REJECTION OF CLAIM 2 (10 PAGES)
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 - 1) PPA-KOFFROTH (4 PAGES)
 - 2) FORM 37 CFR 1.76 (2 PAGES)
 - 3) ANECDOTE IRAQ & (2 PAGES)
COMMERCIAL VALUE
 - 4) COPY COVER SHEET (1 PAGE)
FROM REGULAR APPLICATION:
10/816/420
4. RETURN RECEIPT POSTCARD

APPLICANT: SHIRLEY B. KOFFROTH
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Application/Control Number: 10/816,420

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Art Unit: 3739

DETAILED ACTION



Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(c) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA, 35 U.S.C. 102(c)).

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Plewes (USPN 6,656,210 B1).

April 11, 2005:

STATEMENT 1: With all due respect, we contend that the examiner's initial showing,

sent March 11, 2005, does not produce a *prima facie* case of unpatentable subject matter as anticipated by Plewes(Dec. 2, 2003); in first instance, because no mention was made of the applicant, Shirley B. Koffroth's, benefit of the priority date(Sept. 9, 2003)obtained from the U.S. Provisional Patent Application, 60/499,930; filed on Sept. 9, 2003; and duly recorded on the applicant's PPA, March 3, 2005(see Attachment 1) Published Patent Application, page 2, lines 1-2 of Cross-References); furthermore, duly noted within the applicant's regular application, 10/816,420(see page 1, lines 1-4) in dispute; filed with the corresponding data sheet attached herein as evidence: 37 CFR 1.76(see Attachment 2)page 1, lines 19-23. Nor was an explanation given by the examiner(see examiner's brief; pp. 2-6)with due precedent as to the reason for said exclusion(see note 1).

Note 1. Evidence & Persuasive Argument

On the outset, we contend that the examiner's chose of 37 U.S.C.102(e) to make the rejection of the applicant's Claim 1; was not withstanding with the prerequisite(see Examination of Applications; Chapter 700, page 21)to first consider whether the reference qualifies as prior art under 35 U.S.C. 102(b), because this section results in a statutory bar to obtaining a patent. And said the foregoing, we furthermore put into

evidence that the issue date of Plewes patent(Dec. 2, 2003)disqualifies it as prior art

given it is not more than 1 year prior to the effective filing date(Sept. 9, 2003)of

Koffroth's Regular Patent Application. Therefore, and said the above, we

contend that the applicant's right to obtain a patent is apparent because the

examiner's initial showing rejecting Claim 1, by citing Plewes as prior art, was

Improper and automatically disqualifies a *prima facie* case of anticipation by Plewes.

STATEMENT 2: Had the prior art in question qualified as a legitimate reference, then

for sake of argument, we additionally contend that the examiner's initial showing did

not produce a *prima facie* case of unpatentable subject matter anticipated by Plewes

on the grounds that anticipation is established only when a single prior art reference

discloses each and every element of a claimed invention. Nonetheless, before

treating this principle--done so in note 3--at the outset, we make mention, in favor of

the applicant, the manner in which Plewes describes his invention(see note 2).

Note 2. Evidence & Persuasive Argument

Throughout Plewes abstract, claims and disclosure(see Plewes; pp. 1-6)Plewes

repeatedly describes the bandage-type wrap in question, as a "thermal" device

intended for "thermal" transference(see claims Plewes, pp. 3, line 7 & pp. 6, lines 9

&13)to the hurt area of an injured person's body parts(see definitions-Webster: bottom of Part 1); as does the examiner(see pp.1, line 1, examiner's brief); in conflict with Plewes teachings stipulating that the wrap in question was devised for the placement of "hot/cold" packs(Plewes pp. 1-6). Therefore, in first instance, the applicant notes the incorrect usage of "cold" regarding the prior art described as a "thermal" device and asks that all consideration of "cold" therein(Plewes pp. 1-6)be understood as a contradiction in favor of the applicant, given the obvious limitation imposed by Plewes, and fortified by the common knowledge of those skilled in the art of jurisprudence.

Note 3. Evidence & Persuasive Argument

In reference to statement 2, that a *prima facie* case of unpatentable subject matter is established only when a single prior art reference discloses each and every element of a claimed invention, we move now to the examiner's exposition concerning the above;(pp. 2, lines 1-3; & pp. 3, lines 1-8)in an attempt to verify that Plewes contains each and every element of the claimed invention(page 3, lines 8-9, Examiner's brief). But as it is apparent this can not be proven, the examiner admits to one element observed to be missing: "Plewes fails to disclose that the strip of flexible material of

sufficient length and width to gird a wearer's waist from the midriff down."(see page 4, lines 11-12; examiner's brief). Nonetheless, does not mention there are at least five Koffroth elements that Plewes fails to disclose as follows:

1.) Plewes fails to disclose that the strip of flexible material is of sufficient length and width to gird a wearer's waist from the midriff down.

2) Plewes fails to disclose that the pocket-like receptacles are for the placement of type blue or treated ice.

3) Plewes fails to disclose that the connecting means of his wrap consist of an ample length of Velcro.

4) Plewes fails to disclose that said connecting means are an external element sewn to the wrap's extremities(see note 4, lines 1-9).

5) Plewes fails to disclose that the pocket-like receptacles contain fastening means on the inner side of the upper portion of said pockets.

Note 4. Evidence & Persuasive Argument

Furthermore, concerning what Plewes fails to disclose, and in reference to Plewes not having disclosed that said connecting means are an external element sewn to the wrap's extremities 4); we make mention of the L shaped hook-loop fasteners placed

internally along 3 sides of the bandage-type wrap(see Plewes drawings Fig. 3)and the internal method of closing said wrap by lapping the elastomeric wrap over upon itself from one side to the other; thus setting it apart, not only in missing elements, but also in design from Koffroth's belt as can be appreciated, even at a quick glance, when comparing Plewes drawing, Fig. 2, with Koffroth's drawing, Fig. 2(Also see Plewes Claims, pp. 2-3 and Koffroth's Claims; PPA pp. 2 and page 4, lines 1-3). In conclusion, except for the pocket-like receptacles, a property employed in many prior arts, Plewes invention does not contain each and every element of the claimed invention. In fact, very few of said elements, given that it was designed for small body parts(see Fig. 1--a drawing of the wrap in usage on an elbow--2 & 3)such as an arm, elbow or ankle as shown in the drawings, all composed of 3 pockets, insufficient for circumference of the waist; whereas Koffroth's drawings, Fig. 1 & 2, clearly show ample pocket-like receptacles(about 8)for use on the waist. In fact, waist is never implied or mentioned by Plewes; nonetheless, Plewes does make specific mention of the wrap's usage on body parts such as the elbow, knee or other similar areas(see Plewes; pp.6, line 13 & definitions-Webster).

STATEMENT 3: Had the prior art in question qualified as a legitimate reference, then

for sake of continued argument, we furthermore contend that the examiner's initial showing did not produce a *prima facie* case of unpatentable subject matter anticipated by Plewes on the grounds that anticipation is established only when the prior art element performs the identical function specified in the claim in substantially the same way, and produces substantially the same results as the corresponding element disclosed in the claimed invention.

Note 5. Evidence & Persuasive Argument

In reference to statement 3, in first instance, we repeat our conclusion from note 2, that given Plewes imposed limitation by referring to his invention as a **thermal** device used for **thermal** transference(see definitions-Webster), the consideration of **cold** is obviously not an issue here(see post datum). And given the heretofore, we continue to focus on whether or not the prior art discloses identical functions specified in the claim, in substantially the same way, and produces substantially the same results as those corresponding to the claimed invention. "Plewes discloses a **thermal** device"(page 2-line 1 of examiner's brief)for medical usage to give therapeutic treatment, said wrap applied to the body parts of an injured person, and thus permitting **thermal** transference(see Plewes, pp. 1-6). While Koffroth obviously

discloses a cooling device given the title of the claimed invention: Ice belt to reduce body temperature; furthermore teaching in the resulting specifications, that said device is exclusively for use around the waist, was designed for sports, exercise, and safety to lower body temperature and to avoid heat exhaustion, especially when the user is exposed to high climatic conditions. We therefore conclude that an identical function is not present in Plewes vs. Koffroth(curing an injured person's body parts vs. lowering a person's body temperature while engaged in energetic activity, especially when exposed to high climatic conditions). Furthermore, contend that the functions of said inventions are not substantially performed in the same way because of Plewes limitation regarding **thermal**(hot vs. cold), and finally contend that the same results are not evident: curing a medical condition: an injury, vs. avoiding a medical condition: heat exhaustion(Plewes vs. Koffroth). And furthermore, as Plewes device is "thermal", it would be impossible that said device be capable of performing the recited functional limitations of the claimed invention which is understood as a "cooling" device. Clearly then, the spirit and scope of the claimed invention radically departs from the prior art and a *prima facie* case of unpatentable subject matter as anticipated by Plewes cannot be proven. Therefore, no further discussion relating to the manner of usage

and operation will be provided because the differences between the two devices in question are deemed readily apparent and obvious to one skilled in the art;(see Plewes; pp. 1-6 & Koffroth's PPA(Published Patent Application), pp. 1-4).

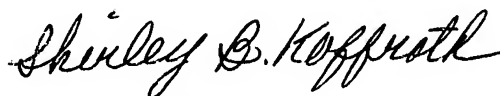
Post Datum to note 5: Given the grave contradictions regarding "thermal" throughout Plewes specifications etc., the applicant cannot help but wonder how Plewes patent was granted in the first place; nor exclude mentioning that the two prior arts cited in the examiner's brief, Plewes & Horning, are more similar one to the other, than either one of them to the applicant's claimed invention; either alone or combined(there is no mention of waist in Horning's teachings either). Furthermore, given that the two patents were granted six months apart(Horning: June 24, 2003 vs. Plewes: Dec. 2, 2003)the applicant cannot help but wonder why Plewes patent was not considered anticipated and obvious by Horning.

STATEMENT 4: We furthermore contend that the examiner's initial showing does not produce a *prima facie* case of unpatentable subject matter as anticipated by Plewes because basically, the drawings from the prior art(see examiner's brief, page 1, lines 1-10)that were used as substantial evidence; do not qualify for said strategy, given Plewes drawings do not exhibit all the claimed structural features and how they are

put together(See drawings Plewes & specifications).

CONCLUSION PART 1: With all due respect, we contend that the examiner's initial showing of March 11, 2005, does not produce a *prima facie* case of unpatentable subject matter as anticipated by Plewes; nor does it hinder, in any way, the applicants right to obtain a patent on the grounds that citing Plewes as prior art was improper(see Statement 1); and on the additional grounds put forth by the applicant in the rebuttal presentation, Part-1. Given the above, we then contend that the examiner's rejection of Claim 1 should be rescinded. Furthermore, and not excluding mention that the potential patentee, by law, has the right to contribute a novel, useful, unobvious and commercially feasible invention(see attachment with reference to Iraq)to the art(preferably: 482/105).. We therefore respectfully petition that Claim 1, rejected on grounds of anticipation by Plewes, be allowed as stands in Mrs. Koffroth's Non-provisional Application, and that all associated office action terminate as soon as possible.

Respectfully,

A handwritten signature in cursive script, reading "Shirley B. Koffroth".

Shirley B. Koffroth

DEFINITIONS: Webster's New International Dictionary

Thermal: heat, hot, warm, to warm, make hot

Therapeutic: curative, medicinal, medical

Body Part: When referring to the human anatomy, a body part is differentiated from the whole of the body which is considered the trunk, and refers to either the upper or lower limbs.

Ice: water frozen, cold, to freeze

Human Body: consisting of the head, neck, trunk, upper limbs and lower limbs. The arm, elbow etc. is found in the category, upper limbs; the leg, ankle etc, lower limbs.

Trunk: The trunk or main part of a person or animal is distinguished from the limbs, head, neck, just as the trunk of a tree from its branches.

Thorax: Comes within the category of the main part of the body or trunk..

ATTACHMENTS(see envelope attachments)

- 1) PPA-KOFFROTH
- 2) FORM 37 CFR 1.76(included with 10/816,420)
- 3) ICE BELT'S COMMERCIAL VALUE:
(ANECDOTE ABOUT IRAQ)

①

US PATENT & TRADEMARK OFFICE

PATENT APPLICATION FULL TEXT AND IMAGE DATABASE



(1 of 1)

United States Patent Application**20050049661****Kind Code****A1****Koffroth, Shirley B.****March 3, 2005**

Ice belt to reduce body temperature

Abstract

The Ice Belt To Reduce Body Temperature is a belt made of a turned out strip of flexible material of ample width and length to gird the waist from the midriff down, contains pocket-like receptacles on its innermost body-contacting side for the placement of flexible ice bags, and is secured around the waist by a connecting means. The Ice Belt to Reduce Body Temperature is a new concept of belts intended for sports, exercise and safety because the Ice Belt To Reduce Body Temperature provides the wearer with the comfort of a lower body temperature when exposed to high climatic conditions. In fact, most belts pertaining to the prior art are designed to promote sweating--a symptom of high body temperature--rather than reduce sweating. Therefore, the Ice Belt helps to lessen the risk of the user acquiring heat exhaustion when exposed to high climatic conditions.

Inventors: **Koffroth, Shirley B.; (Palmdale, CA)****Correspondence** **Mrs. Shirley B. Koffroth**
Name and **1342 Jaguar Court**
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CA
93551
US**Serial No.:** **816420****Series Code:** **10****Filed:** **April 1, 2004****U.S. Current Class:****607/108; 607/112; 607/114****U.S. Class at Publication:****607/108; 607/112; 607/114****Intern'l Class:****A61F 007/00; A61F 007/12**

Claims

What I claim as my invention is:

1. An Ice Belt To Reduce Body Temperature, comprising: a strip of flexible material of sufficient length and width to gird the waist from the midriff down, said strip having a body contacting side and an opposite outwardly facing side and an upper edge and lower edge; pocket-like receptacles secured to the innermost body contacting side of the Ice Belt for the placement of frozen-flexible ice bags--type blue or treated ice; the said belt further contains; connecting means to secure the upper and lower edges of the belt together and hold the belt in folded condition with the pocket-like receptacles inside the fold and the strip of flexible material to the outside thereof.
2. The belt of claim 1, containing pocket-like receptacles attached to a strip of flexible material for the placement of ice bag's--type blue or treated ice--furthermore contains: fastening means on the inner side of the upper portion of the pocket-like receptacles; thus securing the ice bags from falling out, and facilitating the removal of the ice bags at intervals for refreezing when the ice melts; depending on the temperature, body functions, and outer garment of the user while wearing the Ice Belt.

Description

CROSS-REFERENCE TO RELATED APPLICATION:

[0001] This is a Non-Provisional patent application claiming the benefit of U.S. Provisional Patent Application Serial No. 60/499,930 filed Sept. 9, 2003, which is hereby incorporated by reference in its entirety.

STATEMENT REGARDING FED SPONSORED R & D:

[0002] There is no sponsoring.

SEQUENCE LISTING A TABLE OR A COMPUTER PROGRAM APPENDIX

[0003] None

DESCRIPTION

BACKGROUND OF THE INVENTION

[0004] None of the prior art belts designed for sports, exercise or safety provide the wearer with the comfort of a lower body temperature when exposed to high climatic temperatures. In fact, most prior art belts are designed to promote sweating--a symptom of high body temperature--rather than reduce sweating. Therefore, the Ice Belt to reduce body temperature--from here on referred to as the Ice Belt--far surpasses prior art belts intended for sports, exercise and safety. Why? Because the Ice Belt's principal utility is to lower body temperature and not elevate it; thus avoiding that the user of the Ice Belt is vulnerable to the dangerous condition of heat exhaustion.

BRIEF SUMMARY OF THE INVENTION

[0005] With the above in mind, I contend that my invention, an Ice Belt

BRIEF SUMMARY OF THE INVENTION

[0006] (continued from page 1) to reduce body temperature, is unique because the user acquires an elevated degree of resistance to high climatic temperatures and therefore his body functions operate more normally. Thus, the principal object of my invention is to provide a more comfortable body temperature for the user when exposed to high temperatures, thus elevating his resistance to heavy heat as found in tropical zones. Therefore, the Ice Belt's principal utility is to lower the body temperature and help prevent heat exhaustion.

BRIEF DESCRIPTION OF THE DRAWINGS

[0007] FIG. 1 is a perspective view of the Ice Belt in extended condition showing all of it's components and drawn to a reduced scale.

[0008] FIG. 2 is a perspective view of the Ice Belt in curled configuration. The drawing is approximately the same scale as FIG. 1.

[0009] FIG. 3 is a front view and shows the Ice Belt fastened onto a dummy figure. FIG. 3 is drawn in a similar scale as FIGS. 1 & 2.

[0010] FIG. 4 is a back view and shows the Ice Belt fastened onto a dummy figure. FIG. 4 is drawn similar to the scales used in

DESCRIPTION OF THE PREFERRED EMBODIMENTS

[0011] Similar parts are designated by the same reference characters in the several views of my invention, the Ice Belt To Reduce Body Temperature, from now on referred to as, the Ice Belt.

[0012] This invention, the Ice Belt, FIG. 1, incorporates the use of pocket-like receptacles, Ref. 1, for the insertion of flexible bags, Ref. 2, made of plastic and containing frozen blue or treated ice. The Ice Belt is attached at the ends by mating fasteners of Velcro, Ref. 3. The pocket-like receptacles, Ref. 1, contain a connecting means placed on the inner-top side, Ref. 4, of the pocket-like receptacles to secure the pocket.

[0013] FIG. 2 is a perspective view of the Ice Belt in curled configuration. When the Ice belt is closed as shown in FIG. 2, the pockets containing the ice bags are located to the inner side of the belt, Ref. 1. FIG. 2 also shows the Velcro fasteners, Ref. 3, located on the belt's extremities, closed to their tightest position as the fasteners can be accommodated to a loose or tightened position, Ref. 5, depending on changes in the waistband measurements:

[0014] FIG. 3 is a front view and shows the Ice Belt, Ref. 6, fastened from the dummy figure's midriff down to his waist. The drawing in FIG. 3 also depicts the Ice Belt, Ref. 6, as shown underneath a body garment; in this case, a shirt, Ref. 7.

[0015] FIG. 4 shows the Ice Belt, Ref. 6, from behind as it looks when positioned on the wearer. The drawing in FIG. 4 also depicts the Ice Belt, Ref. 6, as shown underneath a body garment; in this case, a shirt, Ref. 7.

DETAILED DESCRIPTION OF THE INVENTION

[0016] The invention--an Ice belt to reduce body temperature--consists of a strip of flexible material made of any pliable fabric approximately 4 to 5 inches wide and the length depending on the user's waist measurement. The Ice Belt is equipped with pocket-like receptacle sewn to the strip of flexible material on the innermost body-contacting side of the Ice Belt; the pocket-like receptacle's function is to hold flexible bags of blue or treated ice. The Ice Belt is designed

to fasten around the midriff and extend to the waist by means of an ample length of Velcro sewn to each extremity of the Ice Belt. These Velcro fasteners on both ends of the Ice Belt's extremities should be of sufficient length for accommodation of normal changes in the waistband measurement. The above because a person's waistband measurement is not constant. It basically falls into four different measurement length classifications: standing, before eating; standing, after eating; sitting, before eating and sitting after eating. Also there is one more variable regarding waistband measurement common to each of the four measurement classifications, and this is the effect on waist measurement length caused from breathing, both inhaling and exhaling.

[0017] By the use of extended lengths of Velcro sewn to the Ice Belt's extremities; the Ice Belt can accommodate to expanding or disbanding conditions of the waistband simply by opening the Velcro fasteners sewn to the Ice Belt's extremities and readjusting the fasteners; thus accommodating the Ice Belt to a slightly smaller or larger waistband measurement.

[0018] Plus this suggested facility of extended lengths of Velcro for hand adjustment to waistband changes, the Ice Belt should be fabricated in various sizes; small, medium, large, extra large etc; the measurements depending on whether the Ice Belt is intended for a child, adolescent, man or woman, heavy or thin. The Ice Belt is more effective when worn underneath ones clothing with the pocket-like receptacles that are attached to the innermost body-contacting side of the Ice Belt in direct contact with the user's body.

[0019] The Ice Belt's front piece fabrication is very simple as it consists of sewing together two long strips of flexible material cut to allow hemming for a turned out measurement of from 4 to 5 inches in width, and the length depending on the desired waist measurement. The ends of the strip of flexible materials should be left open for the insertion of the Velcro fasteners; once the two sewn strips of flexible material have been turned out, the Velcro fasteners are sewn to both of the Ice Belt's extremities. Then the securing method(snaps or Velcro etc.)are placed to the inner-top side, Ref. 4, of the pocket-like receptacles. The strip of pockets, Ref. 1, is then secured to the Ice Belt's front piece section, by sewing it into place on the bottom and sides of the turned out strip of flexible material to its innermost body contacting side. The ice bags, Ref. 2, are frozen before placed inside the Ice Belt's receptacles. When the ice in the ice bags melts--depending on the temperature, body functions, and outer garment--used bags can be replaced by freshly frozen ones, or the Ice Belt in its entity can be put into a freezer compartment until the liquid in the bags contained in the Ice Belt's pockets has frozen again. In a temperature from about 85 F. to 95 F., the ice should stay in tack for about 2 to 3 hours, depending on body exertion and the outer garment. In higher temperatures, the ice may only last for an hour; also depending on the outer garment and the exertion used while wearing the Ice Belt. If worn under a bullet proof vest or an armored shield as used for Martial Arts--both insulating devices--the ice's duration can be doubled.

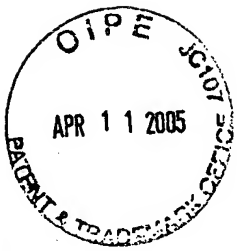
[0020] The present embodiments of this invention are to be considered in all respects as descriptive and illustrative, but not restrictive; the scope of the invention being indicated by the appended claims rather than by the foregoing description; therefore, any changes considered more functional to the original design and utility of my invention, the Ice Belt to Reduce Body Temperature, as long as they come within the meaning and range of my invention's basic conception, a device to lower body temperature, are intended to be embraced therein.

* * * * *



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POSSIBLE USE FOR MILITARY PERSONNEL



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PART 2. Rebuttal In reference to:

Page 1



Application/Control Number: 10/816,420

Page 4

Art Unit: 3739

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Picwes (USPN 6,656,210 B1).

April 11, 2005:

STATEMENT 1: With all due respect, we contend that the examiner's initial showing of March 11, 2005, does not produce a *prima facie* case of unpatentable subject matter on the grounds of obviousness; in first instance, because no mention was made of the applicant, Shirley B. Koffroth's, benefit of the priority date (Sept. 9, 2003) obtained from the U.S. Provisional Patent Application, 60/499,930; filed on Sept. 9, 2003; and duly recorded on the applicant's PPA, March 3, 2005 (Published Patent Application, page 2, lines 1-2 of Cross-References); duly noted within the applicant's regular application in dispute: 10/816,420 (see page 1, lines 1-4); filed with the corresponding data sheet attached herein as evidence: 37 CFR 1.76 (see page 1, lines 19-23). Nor

was an explanation given by the examiner(see examiner's brief; pp. 2-6)with due precedent as to the reason for said exclusion.

Note 1. Evidence & Persuasive Arguments: And said the foregoing; we furthermore put forth into evidence that the issue date of Plewes patent(Dec. 2, 2003)disqualifies it as prior art(see part 1, note 1 which we include here in its entity)given it is not more than 1 year prior to the effective filing date of Koffroth's regular application(Sept. 9, 2003).Therefore, and said the above, we contend that the applicant's right to obtain a patent is apparent because the examiner's rejection of Claim 2 on the grounds of obviousness as unpatentable over Plewes, was improper and automatically disqualifies a *prima facie* case of unpatentable subject matter over Plewes(see Part 1-note 1).

STATEMENT 2: Had the prior art in question qualified as a legitimate reference, then for sake of argument, we additionally contend that the examiner's initial showing of March 11, 2005, does not produce a *prima facie* case of unpatentable subject matter over Plewes on the grounds of obviousness; given there is no motivating force of sufficient weight provided by the examiner which would impel one skilled in the art to do what the patent applicant is claimed to have done; thus justifying the combination of references. Nor does the examiner provide convincing evidence, or an objective reason for doing so as follows:

Note 2: Evidence & Persuasive Arguments

There is no motivating force of sufficient weight which would impel one skilled in the art present in Plewes(pp. 1-6)to convert a "thermal device" used for "therapeutic

medical treatment” on a particular injured person’s body parts(see definitions; Webster; end of Part 2)such as an elbow, knee, or other similar areas(see Plewes, page 6, line 13); into an ice belt or cooling device, exclusively designed for the waist(See Koffroth’s Published Patent Application--PPA; pp. 1-4); its usage for sports, exercise and safety with the express purpose of lowering body temperature and avoiding heat exhaustion when the user is exposed to high climatic conditions. Thus the combination of references is not justified. But before further treating this matter as we amply do in note 3, the applicant makes important mention that throughout Plewes abstract, claims, and disclosure, Plewes repeatedly describes said invention as a “thermal” device intended for “thermal transference”(see Plewes Claims, pp. 3, line 7 & pp. 6, lines 9 &13)to the hurt area of an injured person’s body parts(see definitions- Webster)as does the examiner(see pp.1, line 1, examiner’s brief); in conflict with Plewes teachings stipulating that the wrap in question was devised for the placement of “hot/cold” packs(Plewes pp. 1-6). Therefore, the applicant introduces in evidence the incorrect usage of “cold” regarding the prior art described as a “thermal” device, and furthermore asks that all consideration of “cold” therein(Plewes pp. 1-6)be understood as a contradiction in favor of the applicant, given the obvious limitation imposed by Plewes, and further fortified by the common knowledge of those skilled in the art of jurisprudence.

Note 3: Evidence & Persuasive Arguments: (Plewes states (pp. 4, lines 19-22)that “those skilled in the art will appreciate that the conception, upon which this disclosure is based, may readily be utilized as a basis for the designing of other structures,

methods and systems for carrying out the several purposes(therapeutic, soothing & healing of injuries--see definitions)of the present invention. It is important, therefore, that the claims be regarded as including such equivalent constructions insofar as they do not depart from the spirit and scope of the present invention(therapeutic treatment for the soothing & healing of injuries.)By Plewes clear definition of what those skilled in the art could appreciate about the conception, as quoted above, upon which his invention is based, Koffroth's proposed invention clearly departs from the spirit and scope of Plewes invention; a "thermal" bandage-type wrap intended for the therapeutic healing of injuries by employing "thermal transference" to particular body parts(see definitions-Webster). In other words, to cure a medical condition(injuries)with heat, and not to the contrary, as in Koffroth's "cooling" device: to avoid a medical condition(heat exhaustion)with ice. Thus, we contend there is no motivating force present in Plewes(pp. 1-6)of sufficient weight to impel one skilled in the art to convert Plewes "thermal" device into Koffroth's "cooling" device given the above, and the limitations set forth by Plewes as specified here and in note 2. And given the a forehand, there is not sufficient motivating force to impel one skilled in the art to do what the patent applicant is claimed to have done; hence, no justification for combining of references

STATEMENT 3: Given our contention, backed by the applicant's above evidence and persuasive arguments, that the examiner did not have sufficient justification to combine references because the evidence provided by the examiner is not sufficient to serve as a strong enough motivating force which would impel one skilled in the art

to do what the patent applicant is claimed to have done, we furthermore bring attention to the contradictions of terminology used in Plewes disclosure, versus the terminology employed in the claimed invention's disclosure in dispute(see note 4).

Note 4: Evidence & Persuasive Arguments

The fact that the words and phrases used in Koffroth's proposed invention disclosure, claims, & abstract clearly give the opposite meaning of the same in Plewes disclosure, claims, & abstract, at even a speed-reading glance, demonstrates the great difference regarding the two inventions as follows:

Koffroth: ice, sports, exercise, belt, waist, body temperature, avoid heat exhaustion, high climatic conditions etc.

Plewes: thermal, therapeutic treatment, wrap, cure, hurt body parts, temporarily securing, thermal transference etc.(see Kof. pp.1-4, Ple. 1-6); and is yet another reason to sustain that the prior art "**as a whole**" would not have provided the necessary motivating force to impel one skilled in the art to do what the patent applicant is claimed to have done; nor would the prior art have been obvious enough to that person to properly justify the combination of references.

STATEMENT 4: Furthermore, we contend that there is no evidence provided in the examiner's brief(pp. 4, 5)to justify combining a reference to the prior art; thus substantiating Koffroth's claimed invention as obvious and unpatentable over Plewes. The examiner merely confuses the issue by quoting Plewes description in the prior art of the preferred embodiments(Page 5, lines 1-11). And furthermore, does not give an objective reason for combining a reference to the prior art, nor disclose

any suggestion or motivation sufficiently strong enough to impel one skilled in the art to do what the applicant is claimed to have done.

Note 5: Evidence & Persuasive Arguments:

Giving the impression that convincing evidence will hence forth be provided to substantiate the combination of Horning's reference with Plewes, the examiner initiates by mentioning Plewes failure to disclose that the strip of flexible material is of sufficient length and width to gird a wearer's waist from the midriff down(page 4, lines 11-12; examiner's brief); then further confuses the issue, by extensively quoting Plewes description of the preferred embodiments(page 5, lines 1-11). The point is, the examiner fills the page with the quote from Plewes, but does not give a convincing argument as to why one skilled in the art would be impelled to create Koffroth's invention given the prior art, nor an objective reason why Plewes teachings justify a combination of references pursuant the issue at hand. In fact, a combination of references "per se" is never mentioned, only performed with a brief preliminary referring to the examiner's obvious problem--certainly not gathering convincing evidence as to why one skilled in the art would be motivated to conjure Koffroth's invention from Plewes--but precisely the lack of recitation by Plewes regarding the use of said "thermal" device around the waist(see page 5, lines 12,13 & 14 of examiner's brief). Unfortunately, not even the combination of prior arts produces Koffroth's claimed invention. The waist is never mentioned by Horning. In fact, Horning's bandage is specified similar to Plewes wrap for treating injuries associated with body parts(Horning's claims, page 3, line 1 & page 4, line 8)such as the "neck or head" or

“arm or leg”(Horning’s claims, page 3, line 24 & 25)while Koffroth’s belt is always associated with girding the waist(see page 1-4 PPA & claims, page 2, line 2)located within the trunk of a human being and not within his or hers, body parts(see definitions). In fact, after carefully digesting the similarities between the two prior arts granted within six months(June 24, 2003 & Dec. 2, 2003)apart, the applicant found difficult to believe that Plewes device was not contested as being anticipated and obvious by Horning because the two inventions are more similar one with the other, than either of them, combined or not, with Koffroth’s proposed contribution to the art. Nonetheless, and for the sake of argument--nothing personal--regarding the examiner’s possible motivation for attempting to combine the two prior arts; thus establishing a case of obviousness for rejecting the applicant’s proposed Claim 2, “hindsight” comes to mind. Something very understandable considering the difficulty of the task that was at hand. Possibly on the onset, inspired at first by only a quick glance at the prior art. And given the above hypothesis, did not study the strong differences(also see differences-Part 1)asserted in the above rebuttal, between Plewes prior art, Hornings’(said reference in dispute by applicant), and the applicant’s proposed invention; nor consider how the new and unexpected result of the claimed invention(to avoid heat exhaustion)would weigh against an accusation of obviousness.

STATEMENT 5: Furthermore, we contend that the examiner’s affirmation it would have been obvious to one of ordinary skill in the art to modify Plewes invention, specifying: ‘including the waist in order to apply thermal treatment to that area”(page 5, line

22)is not only contradictory, but not in evidence regarding waist in either Plewes(pp. 1-6)or Horning(pp. 1-10--said combination of references in controversy); on the other hand, obviously in favor of the applicant.

Note 6: Evidence & Persuasive Arguments provided within Statement 5.

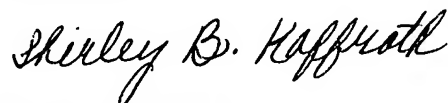
STATEMENT 6: In conclusion, we further mention with respect to establishing a *prima facie* case of unpatentable subject matter on the grounds of obviousness, the examiner again states that at the time of the claimed invention(terminating statement of examiner's brief; page 6, lines 8-12); it would have been obvious to one of ordinary skill in the art to modify Plewes invention, as taught by Horning(said combination of references in controversy)furthermore specifying(page 6, lines 10-12): "to provide fastening means on the inner side of the upper portion of the pocket-like receptacles in order to removably secure the thermal agent(heat retention or cold retention)inside the pocket." Another contradiction in favor of the applicant, the agent in question, specified as "thermal" is obviously, hot, and never cold, when regarding it as **thermal**(see definitions-Webster).

Note 7: Evidence & Persuasive Arguments

Given that we have already amply treated the incorrect usage of "thermal" both by Plewes and the examiner; it is our supposition that the absence of sound reasoning, or convincing evidence for attesting that it would have been obvious to someone of ordinary skill in the art to therefore modify Plewes "thermal" device to produce the claimed invention, a "cooling" device with a very different and defined purpose that produces a new and unexpected result, furthermore, speaks for itself.

CONCLUSION PART 2: With all due respect, we contend that the examiner's initial showing of March 11, 2005, does not produce a *prima facie* case of unpatentable subject matter on the grounds of obviousness; nor does it hinder, in any way, the applicants right to obtain a patent on the grounds that citing Plewes as prior art was improper(see Statement 1); and on the additional grounds put forth by the applicant in the rebuttal presentation, Part-2, in protest to the rejection of Claim 2 as unpatentable over Plewes. Given the above, we then contend that the examiner's rejection of Claim 2 should be rescinded. Furthermore, and not excluding mention that the potential patentee, by law, has the right to contribute a novel, useful, unobvious and commercially feasible invention(see attachment with reference to Iraq)to the art(preferably: 482/105), we therefore respectfully petition that Claim 2 be allowed as stands in Mrs. Koffroth's Non-provisional Application, and that all associated office action terminate as soon as possible. In conclusion, and having made a similar petition in Part 1 regarding Claim 1, we respectfully ask that the non-final office action taken regarding the rejection of the applicant's claims, be rescinded, and without further discussion or delay, the applicant's patent be issued.

Respectfully,

A handwritten signature in cursive script that reads "Shirley B. Koffroth". The signature is written in dark ink and is positioned above the printed name.

Shirley B. Koffroth

DEFINITIONS: Webster's New International Dictionary

Thermal: heat, hot, warm, to warm, make hot

Therapeutic: curative, medicinal, medical

Body Part: When referring to the human anatomy, a body part is differentiated from the whole of the body which is considered the trunk, and refers to either the upper or lower limbs.

Ice: water frozen, cold, to freeze

Human Body: consisting of the head, neck, trunk, upper limbs and lower limbs. The arm, elbow etc. is found in the category, upper limbs; the leg, ankle etc, lower limbs.

Trunk: The trunk or main part of a person or animal is distinguished from the limbs, head, neck, just as the trunk of a tree from its branches.

Thorax: Comes within the category of the main part of the body or trunk.

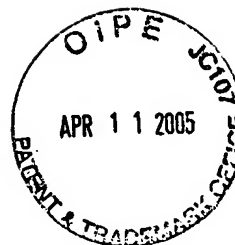
ATTACHMENTS (see envelope attachments)

- 1) PPA-KOFFROTH
- 2) FORM 37 CFR 1.76 (included with 10/816,420)
- 3) ICE BELT'S COMMERCIAL VALUE:
(ANECDOTE ABOUT IRAQ)

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Patent Application Data Sheet(37 CFR 1.76)-- Bibliographic Data

Applicant Information(continued from page - 1 -)

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Domestic Priority Claim

This is a nonprovisional application claiming the benefit under 35 USC 119(e) of U.S. Provisional Patent Application Serial No. 60/499,930 filed Sept. 9, 2003, which is hereby incorporated by reference in its entirety.

Patent Application Data Sheet(37 CFR 1.76)-- Bibliographic Data

Application Data Sheet

Application Information

Application Type:: Regular
Subject Matter:: Utility
Suggested Classification:: 02/311
Suggested Group Art Unit:: None
CD-ROM or CD-R? None
Title:: Ice Belt to reduce body temperature
Attorney Docket Number:: SBK03
Request for Early Publication?:: No
Request for Non-Publication?:: No
Suggested Drawing Figure:: 1
Total Drawing Sheets:: 4
Small Entity:: Yes
Petition included?:: No
Secrecy Order in Parent Apply.?:: No

Applicant Information

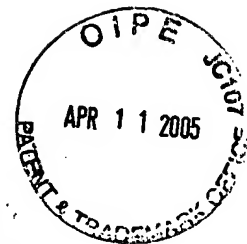
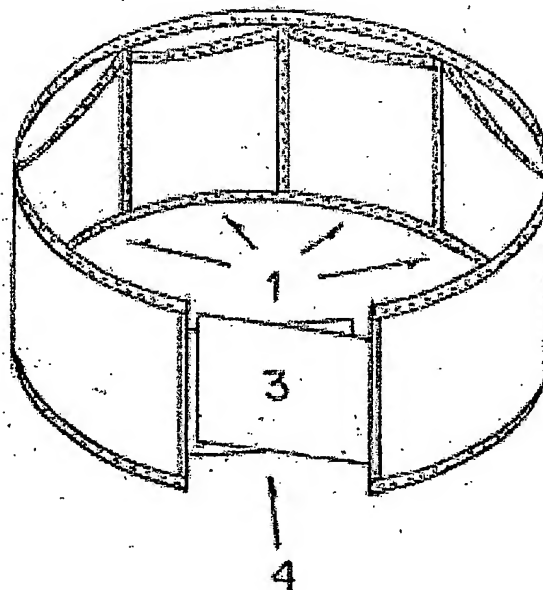
Applicant Authority type:: Inventor
Primary Citizenship Country: US
Status:: Full Capacity

4

FRONT PAGE - NONPROVISIONAL APPLICATION FOR UTILITY PATENT

INVENTION : : ICE BELT TO REDUCE BODY TEMPERATURE

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DOCUMENTS SUBMITTED (Express Mail Label No. _____)
(Applicant claims small entity status.)

1. Utility Patent Application Transmittal(PTO/SB/05) (Pages--1--)
2. Fee Transmittal Form(PTO/SB/17)Fee Check Within(Pages--1--)
3. Specification(Total Pages--9--)
 - Descriptive title of the invention
 - Cross Reference to Related Applications
 - Statement Regarding Fed. sponsored R & D
 - Reference to sequence listing, a table or a computer program listing appendix
 - Background of the Invention
 - Brief Summary of the Invention
 - Brief Description of the Drawings
 - Detailed Description
 - Claims
 - Abstract of the Disclosure
4. Drawings(Total Sheets__4__)
5. Declaration(PTO/SB/01A)(Total Pages--1--)
6. Application Data Sheet - 37 CFR 1.76(Total Pages--1--)
7. Return Receipt Postcard

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